

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - -x

WALTER ELAM,

 Plaintiff,

 -against- 15 Civ 7215

CONCOURSE VILLAGE, INC., ANTHONY
JAMES, INDIVIDUALLY, and LETITIA BOWRY,
individually,

 Defendants.

- - - - -x

DEPOSITION of ANTHONY JAMES, taken by
Plaintiff pursuant to Notice, held at the
offices of The Harman Firm, 220 Fifth Avenue,
New York, New York, on Friday, May 20, 2016,
commencing at 10:00 a.m., before Margaret M.
Harris, a Shorthand (Stenotype) Reporter and
Notary Public within and for the State of New
York.

A P P E A R A N C E S :

THE HARMAN FIRM
Attorneys for Plaintiff
220 Fifth Avenue
New York, New York 10001

BY: EDGAR RIVERA, ESQ.

CLIFTON BUDD & DEMARIA, LLP
Attorneys for Defendants
350 Fifth Avenue
New York, New York 10118

BY: STEFANIE R. MUNSKY, ESQ.

ALSO PRESENT:

Walter Elan

1 James

2 A I cannot say, sir.

3 Q Who gave you the promotion?

4 A The board of directors.

5 Q Did you ask for the promotion?

6 A No, sir.

7 Q So the board of directors decided
8 on its own to promote you to maintenance
9 director?

10 A Yes, sir.

11 Q Did the board give you a reason
12 why they were promoting you?

13 A I was served with a document
14 where I was promoted.

15 Q And what did that document say?

16 A I cannot say verbatim, but it
17 says I was promoted to the responsibility of
18 director of maintenance and I have full
19 supervision of, where I would be actually in
20 change of everything for maintenance at
21 Concourse Village.

22 Q Was the promotion a surprise?

23 A No, sir.

24 Q When did you first find out that
25 you were being promoted?

1 James

2 new lead supervisor?

3 A Yes, sir, with the directive of
4 the board.

5 Q Do you intend to hire one?

6 A Yes, sir.

7 Q What's the lead supervisor
8 responsible for?

9 A The day-to-day running of
10 Concourse Village.

11 Q And what is Concourse Village?

12 A It's a Mitchell-Lama corp.

13 Q Is Concourse Village a business?

14 A I don't understand that question,
15 sir.

16 Q You testified that the lead
17 supervisor was responsible for the day-to-day
18 running of Concourse Village, correct?

19 A Yes, sir.

20 Q And what is the day-to-day
21 running of Concourse Village?

22 A Ensuring the upkeep, the upkeep,
23 such as cleaning, solving issues reported by
24 tenants or residents.

25 Q Besides the day-to-day running of

1 James

2 A Yes, sir.

3 Q What are those procedures?

4 A We operate progressive
5 discipline.

6 Q Is this your policy or Concourse
7 Village's policy?

8 A It's a general policy.

9 Q So that's Concourse Village's
10 policy?

11 A I wouldn't say Concourse
12 Village's policy, it's a general policy that is
13 respected by the unions.

14 Q So it's a union policy?

15 A It's part of the union policy.

16 Q And can you explain the union's
17 progressive discipline policy?

18 A If someone should violate or do
19 something not in accordance with the rules, you
20 may first speak to them, give them a verbal
21 warning.

22 The next time you would give them
23 a written warning. The next time you may give
24 them a written warning with a suspension.

25 And if it continues, then you can

1 James

2 terminate them, you can write them and terminate
3 them.

4 Unless it's a crime, such as
5 theft, they can be terminated immediately.

6 Q So if there is a crime, that's an
7 exception to the progressive disciplinary
8 policy?

9 A Yes, sir.

10 Q Are there any other exceptions?

11 A I cannot recall offhand.

12 Q And if an employee isn't within
13 an exception, you follow the progressive
14 disciplinary policy?

15 A Yes, sir.

16 Q You mentioned that one of the
17 responsibilities of a lead supervisor is
18 updating sick leave and work performance; is
19 that correct?

20 A Updating? I didn't say updating.

21 Q How would you describe that?

22 A Sick leave updated by management.
23 On their receiving information from my
24 department, they would update the records.

25 Q If an employee asks for sick

1 James

2 leave, what is your next step?

3 A I have never had an employee ask
4 for sick leave, sir.

5 Q No employee has ever asked you
6 for sick leave?

7 A No, sir.

8 Q Has an employee ever asked you
9 for a day off because he or she was sick?

10 A I don't understand that question.

11 Q Has any employee ever been unable
12 to come to work due to an illness?

13 A Oh, yes, definitely, yes, sir.

14 Q But that's separate from sick
15 leave?

16 A Well, if they do have sick leave,
17 most likely they will apply, they would submit
18 an application for the sick leave that they stay
19 home or for the day they stay home on sick
20 leave, if they have.

21 Q You testified that no employee
22 has asked for sick leave, correct?

23 A Asked me. No, they don't ask for
24 sick leave. They apply for it.

25 Q They apply for it?

1 James

2 the board.

3 Q By "we," who are you referring
4 to?

5 A The board of directors.

6 Q So is this a discussion between
7 you and the board of directors?

8 A I was told, the board of
9 directors, we had -- that conversation came up.
10 It was discussed as one of their policies that
11 always has been.

12 Q You testified that regular
13 supervisors must call the lead or the
14 maintenance director, correct?

15 A Yes, sir.

16 Q And you testified that you can't
17 say if that policy is written and that you have
18 never seen it, correct?

19 A I cannot say if it's written. I
20 never saw it.

21 Q How would a supervisor find this
22 policy?

23 A I cannot say if it was written,
24 sir.

25 Q Have you ever trained a

1 James

2 A Under the rule, yes, it would be.

3 However, I try to have a rapport
4 with my employees.

5 Q So you have a degree of
6 discretion?

7 A Yes, sir.

8 Q On how the rule is applied?

9 A Yes, sir.

10 Q Now, for the other situation,
11 where an employee has a sick dependent that is
12 more than just an emergency, that would be the
13 type of situation that would fall under the
14 FMLA; is that correct?

15 A If it's an ongoing situation,
16 sir.

17 Q How does an employee find out
18 about the FMLA?

19 A Management, if they go to
20 management, management will guide them
21 appropriately or accordingly.

22 Q Do you know of any employee who
23 has gone to management for leave under FMLA?

24 A Since I'm there, I don't know of
25 any.

1 James-CONFIDENTIAL

2 can't recall his first name.

3 But he's about seven months
4 out -- no, about eight months out.

5 Q And when did his leave start?

6 A Sick leave? Sometime last year.

7 No, about nine months out, he's
8 out.

9 Q So nine months from today?

10 A Nine months prior to today. In
11 excess of nine months, yeah.

12 Q And you referred Michael Daiz to
13 management, correct?

14 A I did refer him to management. I
15 cannot say exactly what transpired.

16 Q What did he tell you that led you
17 to refer him to management?

18 A His parents had some medical
19 issues that he wanted some time to deal with.
20 And he had some medical issues, too.

21 Q Did someone tell you that if
22 somebody asked -- strike that.

23 Did Concourse direct you to go to
24 management in the situation where an employee
25 comes to you saying that their parents had

1 James

2 Q Does the lead supervisor have the
3 power to discipline the stockroom supervisor?

4 A Yes, sir.

5 Q Does that discipline include
6 termination?

7 A Yes, sir.

8 Q Can the lead supervisor terminate
9 the stockroom supervisor or stockroom clerk,
10 when you use those two interchangeably, without
11 authorization?

12 A I don't understand that question,
13 sir.

14 Q Sure. I'll rephrase it.

15 Does the lead supervisor need
16 authorization from anybody else before they fire
17 a stockroom supervisor?

18 A Sir, as the lead supervisor, one
19 of the things I always do is to work with
20 management.

21 I had never taken under my
22 responsibility to act or make certain decisions
23 without informing or discussing what I'm about
24 to do.

25 Q So when you were the lead

1 James

2 Q So valid medical reasons is
3 broader than just a genuine illness?

4 A Yes, sir.

5 Q And it would include the things
6 that we talked about before, for example --
7 strike that.

8 It would include a family member
9 who was sick?

10 A As general reasons.

11 Q And it would include a family
12 member who needed to go to a doctor so long as
13 the family member needed help?

14 A Yes, sir.

15 Q So long as the family member
16 couldn't do it themselves?

17 A Yes, sir.

18 Q I asked you this question before.

19 When did you start working with
20 Concourse Village?

21 A April 20, 2015.

22 Q And when was the first time that
23 you met Walter Elam, the plaintiff in this
24 action?

25 A Shortly after. I cannot recall

1 James

2 Q And her answer is she didn't
3 know?

4 A She didn't know.

5 Q Did you ever find out on June
6 22nd where Walter was?

7 A Sometime later I heard he -- I
8 was told he went to the hospital.

9 Q Who did you learn that from?

10 A I heard it within the workers,
11 the employees. I just can't remember who told
12 me that at the time.

13 Q But it wasn't the assistant?

14 A No.

15 Q What's the assistant's name, by
16 the way?

17 A Lillian Somersle.

18 Q So Lillian never told you where
19 Walter was?

20 A At that time.

21 Q Did she ever tell you where
22 Walter was?

23 A Later that day she told me I
24 think he had a medical appointment or he went to
25 the doctor or something. Something like that.

James

a pattern.

Q There is no question.
When did you write that memorandum?

A On the 22nd?

Q Around what time?

A About 3:00.

Q Was that before or after you heard from the employee, who you don't recall, that Walter was dealing with some medical issue?

A I can't recall at that time.

Q Did you send this to Walter, the memorandum?

A I didn't send it to him, sir.

Q This memorandum was never sent to Walter Elam?

A I didn't send it to him, I served him.

Q What's the difference?

A Send means somebody else -- my interpretation is via somebody else as opposed to me serving it to him directly.

Q When did you serve it to him directly?

1 James

2 A I wrote the memorandum the same
3 day. The memorandum is June 22nd.

4 Q But you don't recall when during
5 that day?

6 A Around 3:00, somewhere around
7 that time.

8 Q And you learned at some point
9 during that day from Lillian Somersle and
10 another employee that Walter had been dealing
11 with something medical?

12 A I heard, yes, I heard somewhere
13 around that time.

14 Q But you are not sure if you
15 learned that before or after you served the
16 memorandum to Walter?

17 A I cannot definitely remember. I
18 cannot say right now.

19 Q What did Walter say to you when
20 you handed him this memorandum, if anything?

21 A I did not hear his response.

22 Q I'm sorry?

23 A I did not hear the response.

24 Q Why didn't you hear it?

25 A Because he didn't speak to me, he

1 James

2 grumbled something. He did not speak to me.

3 Q Did he tell you where he was?

4 A No, sir.

5 Q And you are not sure if you knew
6 where he was at the time you handed him the
7 memorandum?

8 A I am not sure.

9 MR. RIVERA: Mark this.

10 (Document Bates stamped
11 P000033 was marked as James Exhibit
12 5 for identification, as of this
13 date.)

14 BY MR. RIVERA:

15 Q I'm handing to the witness a
16 document marked P000033 (handing).

17 A (Perusing document.)

18 Q This document is dated June 24,
19 2015 and says, "To whom it may concern: On
20 Monday, June 22, 2015, Mr. James asked me where
21 is your boss. I told him that he is not coming
22 in today because he had to take his wife to
23 pre-op."

24 Was that an accurate reading of
25 the document?

1 James

2 several, on several reasons.

3 Q No, just on that occasion for not
4 being at work, did you discipline him?

5 A I cannot recall.

6 But if there is a document that
7 can refresh me, I will take a look at it and
8 acknowledge if I did.

9 Q So you don't recall if you
10 disciplined him for not being at work that
11 morning?

12 A On that one, sir, it is a while
13 now, I cannot remember if I did.

14 If I did, I would have written
15 it, and if written, if you showed me, I will
16 acknowledge if it was me.

17 Q Do you have a voice mail at the
18 Concourse that you regularly have access to?

19 A I don't have a voice mail, sir,
20 but I have a phone that all the employees have
21 my number.

22 Q You testified earlier that if a
23 supervisor is going to be absent for a medical
24 reason that one thing that they can do is call a
25 dispatcher?

1 James

2 A Yes, sir -- no call dispatcher,
3 call me or dispatcher.

4 Q Did you speak with the dispatcher
5 on June 22nd?

6 A I always speak with my
7 dispatcher, sir.

8 Q So you did speak to the
9 dispatcher on June 22nd?

10 A I always speak to my dispatcher
11 on a daily basis all the time. So I'm not sure
12 exactly what you are referring to.

13 Q Did the dispatcher inform you
14 where Walter was?

15 A When are you talking about, the
16 22nd?

17 Q Yes.

18 A I can't recall.

19 Q Did you say anything to Walter on
20 June 22nd regarding his wife?

21 A At that time I didn't even know
22 Mr. Walter was married.

23 Q You didn't know he was married at
24 that time?

25 A At that time? No.

1 James

2 A It was not as soon as I got
3 there. It was sometime later.

4 Q In June?

5 A I just can't recall, but this had
6 involved the general manager.

7 Q Who was Sherill Henry at that
8 time?

9 A Yes, sir.

10 And because of his resistance on
11 inquiring to him why he didn't want to work the
12 evening, at that stage he told me his wife was
13 ill.

14 Q So at some point, not in April,
15 but perhaps in June, he told you that his wife
16 was ill?

17 A Yes, sir.

18 Q Was that before or after
19 June 22nd?

20 A I cannot recall the exact time,
21 sir, because when he told me that, I stopped, I
22 eliminated or I did not change his schedule,
23 because I respect family life and I did not want
24 it to have any impact or any adverse effect on
25 his wife.

1 James

2 Q Is it your testimony that when
3 Walter objected to changing the schedule that it
4 was your decision to allow him to keep working
5 the hours he had already been working?

6 A Yes, sir.

7 Q Nobody told you to do that?

8 A Nobody.

9 Q Did you allow anybody else to
10 keep their schedule?

11 A No, sir.

12 Q He was the only exception to your
13 rule?

14 A Yes, sir.

15 Q And, again, why did you make that
16 exception?

17 A Because he told me that his wife
18 was in a medical state and his wife needed him.
19 And I respect family life.

20 Q Did you ask any questions about
21 his wife's medical condition?

22 A No. He told me that she was,
23 that she was badly injured, I think, that was
24 the word he used, she was seriously injured.

25 I never tried to inquire into it

1 James

2 just can't recall. I really, really can't
3 recall.

4 I didn't take note of, I did not
5 put into writing or anything like that what he
6 had told me, because I thought that was
7 confidential.

8 Q When you did learn about Walter's
9 wife, did you ever send him to management?

10 A No, sir.

11 Q Did you think that what his wife
12 had would warrant sending him to management?

13 A Well, Mr. Walter was at Concourse
14 Village long before me, and if it was serious I
15 am of the opinion that he would have taken the
16 necessary actions.

17 I did not see myself getting
18 further involved in it.

19 Q So am I correct in understanding
20 that because he had been an employee for such a
21 long time you believed he would have already
22 known what to do?

23 A Yes, sir.

24 Q And you didn't provide him with
25 anything else?

1 James

2 Q Do you have any reason to know
3 besides what you have just explained, that
4 Walter had received notice of FMLA from anybody
5 at management?

6 A I cannot say.

7 Q And he certainly didn't receive
8 it from you, correct?

9 A He did not receive it from me,
10 sir.

11 Q Were there any other instances
12 besides the June 22nd instance where Walter was
13 late or wasn't at work due to his wife?

14 A I cannot say what it was due to,
15 sir, but there were several days he was late.

16 Q But you are not certain why he
17 was late those days?

18 A No, I'm not certain.

19 Q Did he ever ask you for days off
20 or to be late because of his wife?

21 A Never, sir.

22 Q He never did?

23 A Never did.

24 Q Do you think Walter had ever been
25 distracted at work because of his wife?

1 James

2 A I cannot say, sir.

3 Q Was it --

4 A Just one minute. Let me just
5 correct something.

6 I think, yes, he did ask me to be
7 about twice. Yes, he did.

8 Q Because of his wife?

9 A No, because he had something to
10 do.

11 Q Unrelated to his wife?

12 A I don't know what it was about.
13 I didn't inquire.

14 Yes, he did.

15 Q Did you speak to Letitia Bowry
16 about Walter's termination?

17 A Well, as I indicated before, I
18 spoke to the president and the general manager
19 all the time about performances.

20 Q And they listened to you when you
21 spoke to them about people whom you supervised
22 performances?

23 A Yes, sir.

24 Q Did you make any recommendations
25 about Elam to Bowry?

1 James

2 A Well, that's part of my job. I
3 recommend all the time my opinion, and, you
4 know, I speak to, we communicate, we discuss, we
5 analyze, and, as I said, I never do anything
6 singlehandedly, I would always let them know
7 what I'm up to, at least for information sake,
8 maybe not their input, but information sake.

9 Q Did you recommend his
10 termination?

11 A Eventually, yes, I did.

12 Q And you recommended it to Letitia
13 Bowry?

14 A And the general manager, to
15 everybody.

16 Q To everybody who would listen?

17 A Yes, sir.

18 Q Do you remember what you told
19 Letitia?

20 A There were a lot of
21 conversations. I just can't remember the exact
22 wording.

23 But, in effect, that he was not
24 complying on requests, he was not performing, he
25 was not, he doesn't know material names, he

1 James

2 A Sir, that's one of the
3 qualifications of a stockroom person. You must
4 be aware of a spreadsheet. I'm not supposed to
5 do that.

6 Q So he was supposed to have known
7 that before he took the job?

8 A Of course.

9 Q And so you didn't provide him
10 with any training about that?

11 A No, I did.

12 Q Because you didn't think it was
13 necessary?

14 A As I said, he was in the position
15 over seven years before I got there.

16 And this was quite strange, me
17 requesting a spreadsheet, a database, as to what
18 the stockroom have and what it don't have.

19 He didn't even tell me he didn't
20 have that.

21 Q Before his termination, you let
22 him know that what he was doing was wrong?

23 A Well, not in the direct words
24 like that, because I respect people's feelings,
25 but I was trying to train him about the proper

1 James

2 So then I start questioning his
3 ability to do the job.

4 Even though I requested what I
5 requested as a spreadsheet, inventory, to date
6 he has not informed me, "Mr. James, I don't have
7 that" or "I don't know that."

8 Q You wrote him up for not keeping
9 a proper inventory list, correct?

10 A Yes.

11 Q Can you explain or describe what
12 happened?

13 A Early in my employment I
14 requested an inventory from the stockroom, a
15 written, a handwritten list was given to me by
16 the assistant, not Mr. Elam.

17 I requested it again. This time
18 I didn't get it. I requested it over a period
19 of time.

20 Eventually I got something
21 handwritten by Mr. Elam. I informed him this is
22 not what it is supposed to be like.

23 Q Did you tell him before you
24 received the handwritten inventory list that it
25 needed to be something different?

1 James

2 A No, sir.

3 However, if your boss or your
4 supervisor make a request of that, to me it's
5 insulting to give something like that.

6 Q Had he ever given you an
7 inventory list before?

8 A No.

9 Q That was the first time he was
10 giving you an inventory list?

11 A Yes, sir. After several
12 requests, something that when I go to the
13 stockroom, the amount of stock was there, one,
14 they were outdated; two, they had no place to be
15 in the stockroom. The place was like a junk
16 yard.

17 That's when I start asking
18 questions. You had a soda machine, you had all
19 kind of stuff that need no place in a stockroom.

20 Q And you saw that upon your first
21 day at work?

22 A Not the first day, not the first
23 day. But upon my inspection.

24 Q I'm sorry?

25 A Upon my inspection sometime going

1 James

2 A No. And in this document, does
3 not anything says typewritten.

4 Q It says, "Once again, I am
5 requesting the said document typewritten," so,
6 in fact, it does say that.

7 A No, before it says, prior. It
8 didn't say typewritten or handwritten. The
9 prior request I made never said anything
10 typewritten or handwritten.

11 Q So the prior request wouldn't be
12 clear whether you wanted it to be typewritten or
13 handwritten or either?

14 A So if he had a problem, I
15 included, if he had a problem in understanding,
16 I went all the way to specify exactly what I
17 wanted.

18 Q So you never told Mr. Elam that
19 it was unacceptable because it was handwritten?

20 A Because of, the relationship has
21 been estranged with Mr. Elam.

22 Q As early as June 29th?

23 A Whereby if I tried to speak to
24 him, he would try to record and is hostile
25 measure.

James

Q But it wasn't necessary for you to report it?

A I reported it. I didn't write it.

Q It wasn't necessary for you to memorialize it?

A I wouldn't put it like that. Even though it was like that, I was still trying to have a work relation with him.

Q So you're saying that to keep a work relation with Elam you reported orally but wouldn't go so far as writing to the board that you were having problems supervising him because he was recording conversations?

MS. MUNSKY: Objection to form.

A I wouldn't put it like that, sir.

Q How would you put it?

A I would say I didn't see it necessary at the time to write that.

Q Did you ever write it?

A No, I didn't write it.

Q So it never seemed necessary to you to write it?